

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
C.P. NO.1024/I&BP/NCLT/MAH/2017**

Coram: B.S.V. Prakash Kumar, Member (Judicial) &
V. Nallasenapathy, Member (Technical)

In the matter of **Section 7 of the Insolvency and Bankruptcy Code, 2016** read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016).

1. Punjab National Bank
7, Bhikaji Cama Place
New Delhi – 110 607.

...Financial Creditor/Applicant

vs.

2. Charbhuja Industries Pvt. Ltd.
502/503, Abhay Steel House
Baroda Street, Karnac Bunder
P Demellow Road
Mumbai – 400 009.

.... Corporate Debtor/Respondent.

Counsel for the Financial Creditor: Mr. Fraser Alexander, Advocates

Counsel for the Corporate Debtor: Ms. Chandni Tanna/w.Ms. Bhakti Date, Advocates i/b India Law Alliance

ORDER

(Heard and pronounced on 19.06.2017)

Per B. S. V. Prakash Kumar, Member (Judicial)

1. It is a Company Petition filed u/s 7 of the Insolvency and Bankruptcy Code, 2016, by the Financial Creditor, viz. Punjab National Bank against the Corporate Debtor, viz. Charbhuja Industries Pvt. Ltd., for initiation of Insolvency Resolution Process for the Corporate Debtor Company has failed to repay the debt outstanding against the Corporate Debtor.

2. The case of the Petitioner is that at request of the Corporate Debtor, this Financial Creditor agreed to provide loan facility to the Corporate Debtor, in pursuance of it, the applicant Bank entered into Second Supplemental Joint Deed of Hypothecation on 27.1.2012 along with other Banks, viz. State Bank of India Consortium, accordingly the facilities have been granted as follows:

Packing Credit/Packing Credit in Foreign Currency:	₹15.00crores
Post Shipment/Post Shipment in Foreign Currency:	₹7.00crores
(Sub limit within PC/PCFC)	
Standby PC/PCFC	₹2.50crores

Thereafter, the above limits are reduced to as against the sanctioned letter dated 3.7.2013 for entering into terms and conditions with the Corporate Debtor on 27.10.2013, which are as follows:

Fund Based Packing Credit/Packing Credit	
Foreign Currency	₹14.50crores
Fund Based Post Shipment	₹7.00crores
(Sub limit within PC/PCFC)	

3. The total amount disbursed to this Corporate Debtor has come to ₹14.50crores. When the debtor Company failed to repay the loan as per the terms agreed, this debt has become NPA on 18.11.2015 thereby the outstanding to be paid by the Corporate Debtor as on 27.12.2016 is ₹20,68,35,759 plus interest from 27.12.2016 till the date of realization.

4. While providing this loan facility, this Corporate Debtor created charge on 27.1.2012, thereafter modified on 14.2.2014 on introduction of SBM Bank (Mauritius) Ltd. in Consortium.

5. When the Corporate Debtor failed to repay the same, this Financial Creditor filed original application with DRT-I, Mumbai on 27.12.2016 for the recovery of ₹20,68,35,759 plus interest thereof as mentioned in the column set out to claim the default amount.

6. To prove that the loan has been disbursed to this Corporate Debtor and the Corporate Debtor thereafter defaulted in making the repayment, this Financial Creditor filed Second Joint Loan Agreement dated 27.1.2012, i.e. letter of Acceptance dated 2.1.2012, Second Supplemental Joint Deed of Hypothecation on 27.1.2012, Second Supplemental Inter Se Agreement dated 27.1.2012, Second Supplemental Working Capital Consortium Agreement dated 27.1.2012, Deed of Guarantee dated 27.1.2012, Letter of State Bank of India, dated 15.1.2012, ceding pari passu charge on all existing securities.

7. Apart from this, the Financial Creditor also filed Third Supplemental Joint Deed of Hypothecation dated 27.8.2013 along with the security documents dated 27.8.2013 which are as follows:

1. Third Supplemental Working Capital Consortium Agreement;
2. Inter se Agreement
3. Deed of Guarantee
4. Memorandum of Deposit for extension of Charge for Term Loan/Overall limit dated 24.2.2014.

8. The Financial Creditor also filed Balance and Security Confirmation letters dated 21.8.2012, 31.7.2013, 21.7.2014, 11.8.2015, issued by the Corporate Debtor.

9. Besides these, the Financial Creditor also filed a copy of the CIBIL Report dated 20.1.2017 to show that this loan has become NPA, apart

from this, the Financial Creditor also filed a statement of account showing ₹21,74,78,715.53 debt outstanding as on 16.4.2017.

10. The amount shown in this statement of account is different from the default amount mentioned in the Form because default amount was mentioned as on 27.12.2016, nonetheless it makes no difference to initiate proceedings under Section 7 of the IB Code for it will again be verified by the Insolvency Resolution Professional, at the time of claim verification. Moreover, there is no mandate in Section 7 for crystallization of default amount, thereby this Bench is satisfied that the Financial Creditor has filed all the requisite documents to satisfy this Bench that this Corporate Debtor availed loan thereafter defaulted in making repayment.

11. The Counsel appearing on behalf of the Corporate Debtor has tried to show a letter dated 13.6.2017 given by the State Bank of India. SBI wrote a letter to the Corporate Debtor for submission of the Resolution plan to resolve the NPA account of Charbhuj Industries Pvt. Ltd. latest by 25.6.2017. Since this letter is written for mere arrangement of meeting for resolution plan, that to by SBI, not by this Financial Creditor, it is of no help to stall these proceedings.

12. Therefore, this Bench is of the view that this SBI letter will not have any bearing on the Petition filed by Punjab National Bank. The criteria to be same for admitting the Petition under Section 7 of the IB Code is as to whether the loan has been availed by the Corporate Debtor and thereafter, as to whether the Corporate Debtor defaulted in making repayment or not, to which for there has been enough evidence before this Bench to prove the Corporate Debtor defaulted in making repayment, a letter written by SBI for submissions of resolution plan by Corporate Debtor will not make any sense to show it as a defence in a case filed under Section 7 of IB Code.

13. The Petitioner Counsel has admitted that in respect of hearing of this case, he has sent notice to the Corporate Debtor before filing of this case and after filing this case as well. However, servicing notice upon other side is insignificant as the Corporate Debtor side appeared effectively argued on the corporate debtor behalf.

14. In view of the same, this Petition is hereby admitted with the reliefs as mentioned below:

- i. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- ii. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- iii. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- iv. That the order of moratorium shall have effect from 19.6.2017 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section

(1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

- v. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- vi. That this Bench hereby appoints Mr. Rahul S. Kavathekar, 104, Shree Ganesh, 32-F, Bhavani Shankar Road, Near Kabutar Khana, Dadar (West), Mumbai - 400 028, Registration No. IBBI/IPA-01/2016-2017/538 as interim resolution professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

15. The Registry is hereby directed to communicate this order to the Financial Creditor and the Corporate Debtor.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B. S.V. PRAKASHKUMAR
Member (Judicial)